IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 281 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
BHAILALBHAI MATHURBHAI PATEL - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,M/S.VYAS ASSOCIATES for Applicant(s) : 1,
MR RK PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 22/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'B' has referred the following two questions under Section 256(1) of the Income Tax Act,1961 (the Act) at the instance of the Commissioner of Income Tax.

> "1 Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in relying its own decision in the case of Mahendra R.Divecha when in that case statement of case has already been drawn by the Tribunal in order dtd.27.10.1993?
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> 2.Whether, in view of the spirit behind the amendment to section 55, the Tribunal is right in law in holding that no part of the amount received by the asessee for surrendering of tenancy right is taxable ?"

2 The Assessment Year is 1988-89 and the relevant accounting period is Financial Year 1987-88.

3 Heard Mr.M.R.Bhatt, learned Senior Standing Counsel on behalf of the applicant-revenue and Mr.B.D.Karia, learned Advocate on behalf of the respondent-assessee.

4. In so far as question No.2 is concerned, it is common ground between the parties that the issue in controversy stands concluded by a decision of the Supreme Court in the case of *Commissioner of Income Tax Vs. D.P.Sandu Bros Chembur P.Ltd. (2005) 273 ITR Pg.1.* In the circumstances, it is not necessary to set out the facts and contentions in detail.

5. Applying the ratio of the aforesaid decision

to the facts of the present case, it is held that the Tribunal was justified in holding that no part of the amount received by the assessee for surrendering the tenancy right is taxable. Question No.2 is, accordingly answered in the affirmative i.e. in favour of the assessee and against the revenue.

6.In so far as question No.1 is concerned, though the same is referred it does not arise as such from the order of the Tribunal, hence, the same is returned unanswered. Considering the fact that the question No.2 stands concluded by the aforesaid decision of the Apex Court, question No.1 is even otherwise rendered academic.

7. The Reference stands disposed of accordingly, with no order as to costs.

Sd/- Sd/-
(D.A.Mehta,J) (H.N.Devani, J)

m.m.bhatt